

Federal Court



Cour fédérale

Ottawa, January 28, 2020 – A Judgment was issued today by the Honourable Justice Michael L. Phelan of the Federal Court in files T-2153-00 and T-2155-00 :

IN THE MATTER OF PETER WATSON et al v HER MAJESTY THE QUEEN et al; and WESLEY BEAR et al v HER MAJESTY THE QUEEN et al

Court Decision

The Federal Court determined that the amalgamation of two Treaty 4 Indian Bands, the Chacachas and Kakisiwew into the Ochapowace Indian Band, was unlawful by virtue of the failure of the federal Crown to implement the promises of Treaty 4 in accordance with its obligation of “honour of the Crown.”

This finding was the first part of long-standing litigation to re-establish the Bands as separate entities. The second part of the litigation will deal with further issues of the consequences of this declaration and the appropriate remedies to be fashioned. The Court maintains jurisdiction over this case and has given the parties 90 days to outline their proposals for this next phase.

Summary : Justice Phelan found that the promises in Treaty 4 included a promise of a reserve for each band. The Bands claimed that lands surveyed in 1876 became reserves lands for each Band separately. In 1881 Canada surveyed a joint reserve for the Kakisiwew and Chacachas and in 1884 the two bands were combined without consent into one band when Chief Ochapowace became chief of the amalgamated band: the Ochapowace Band.

The descendants of the two original Bands, particularly the Chacachas, claimed that the amalgamation was accomplished without their required consent. The Bands have also claimed for declaration as to their status and for compensation for breaches of fiduciary duties, breaches of trust, and breaches of treaty.

Canada has denied the Bands’ claims, factually and legally, including that the reserves were never created and that amalgamation was done with consent. Canada further said that even if the claims are proven, the claims are time-barred or otherwise acquiesced in by the members of the Bands at the time of amalgamation and for years subsequent to the amalgamation.

The first phase of the trial engaged, in part, in answering specific questions set by Justice Hugessen in 2008 principally related to the existence of the Bands, the amalgamation and the recognition of those Bands in current circumstances. The Court concluded that, in addition to the unlawful amalgamation, the Chacachas Band has continued as a distinct rights bearing collective even if not recognized as a band under the *Indian Act*, and it is entitled to assert treaty rights under Treaty 4.

The Court held that declarations regarding the constitutionality of Crown conduct are not time-barred, but that the Chacachas and Kakisiwew Bands are estopped from seeking further treaty land entitlements from Canada because of settlement agreements made.

Justice Phelan reiterated that the purpose of this declaration is to provide a basis for the descendants of the two Bands, the existing Ochapowace Band and Canada to negotiate or otherwise determine how the Chacachas people can separate from the Ochapowace Band.

The issues of how that separation will be accomplished as well as a number of other complex issues will be the subject of the second phase of this litigation.

An audio recording of this summary in the Cree language will be available as soon as possible on the Court website at: <https://www.fct-cf.gc.ca/en/pages/media/webcast>

A copy of the decision can be obtained via the Web site of the Federal Court: <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/460388/index.do>